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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,090	10/18/2006	Casper Kildegaard	502424.117543	1159
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DAY PITNEY LLP 7 TIMES SQUARE NEW YORK, NY 10036-7311			EXAMINER YOUNGER, SEAN JERRARD	
			ART UNIT 3745	PAPER NUMBER
			MAIL DATE 09/01/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/586,090

Applicant(s)

KILDEGAARD, CASPER

Examiner

SEAN J. YOUNGER

Art Unit

3745

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 July 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 27 May, 2009 have been fully considered but they are not persuasive.
2. In response to Applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a direct method for determining the blade tip position) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Gauns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). As broadly claimed, the cited art reads fully on the claims, as described in the Office Action.
3. The Applicant asserts at page 6, paragraph 3 of the remarks that a strain gauge is sensitive to wind gusts which would influence the calculation of the blade location. The Applicant is respectfully reminded that wind gusts also influence the *actual* position of the blade, and therefore sensitivity to wind is desirable in a position monitoring system.
4. The Applicant asserts at page 7, paragraph 1 of the remarks that a GPS sensor is relatively immune to environmental elements such as lightning. The examiner respectfully disagrees. A strain gauge is a much simpler device than a GPS sensor, and thus would be more capable of handling an adverse environmental event such as a lightning strike.

5. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant asserts at page 7, paragraph 3 of the remarks that Roberts does not teach a method of determining the location of a specific point on the wind turbine blade, however these elements are already disclosed by Rebsdorf. The only teaching for which the Roberts reference is relied upon is that a GPS sensor is known to be used in a wind power apparatus for the purpose of location detection. Again, all other elements are disclosed by the primary reference to Rebsdorf.

Drawings

6. The drawings are objected to because the figure labels appear to be in a foreign language. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 4, 5 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
9. Claim 4 recites the limitation "the at least one predefined reference point" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.
10. Claim 5 recites the limitation "the re-defined point" in line 5. There is insufficient antecedent basis for this limitation in the claim.
11. Claims 5 and 6 recite the limitation "the at least one point predefined on the blade" in lines 3-4 and line 2, respectively. There is insufficient antecedent basis for these limitations in the claim. For purposes of examination with respect to the prior art, the examiner will interpret the limitation to read: "the at least one predefined point of the blade." Appropriate correction is required.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1-3, 5, 7, 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Rebsdorf [U.S. 6,619,918]. Regarding claims 1, 2 and 10, Rebsdorf discloses a blade for a wind energy plant and a method of monitoring the operation of a wind energy plant, wherein monitoring comprises collection of blade related operational data. In at least one predefined point on the blade, a position indicator (strain gauge, 7) is arranged that can be used in a positioning system for identifying the position of the position indicator. The position of the position indicator and the predefined point (strain gauge location) are determined and collected as a part of the blade related operational data. Rebsdorf's method is used in a control and regulation algorithm for controlling the wind energy plant [column 4, lines 24-39].

14. Regarding claim 3, Rebsdorf discloses that the position of the at least one predefined point (strain gauge location) is used for determining material stresses in the blade by determining the flexing in the blade. The method comprises the steps of: comparing the collected position of the predefined point (strain gauge location) to a predefined reference position of that point (unstressed strain gauge location), and based on comparison of a collected position to the reference position (strain measurement), determination of the flexing and hence the material stress on the basis

of deviations between the collected position and the reference position [column 2, lines 50-53].

15. Regarding claim 7, Rebsdorf discloses a system for monitoring the operation of a wind energy plant, wherein the system comprises means for collecting blade related operational data. In at least one predefined point on the blade, a position indicator (strain gauge, 7) is arranged that can be used in a positioning system for identifying the position of the position indicator. Rebsdorf's data collection means includes means for collecting the position of the position indicator and the position of the predefined point (strain gauge location).

16. Regarding claims 5 and 8, the positions of Rebsdorf's reference points (unstressed strain gauge location) are known, and the positions of the predefined point (strain gauge location) on the blade are determined by use of the distance from the reference points to the position indicator (strain gauge, 7) arranged in the predefined point.

Claim Rejections - 35 USC § 103

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rebsdorf [U.S. 6,619,918]. Rebsdorf discloses all elements substantially as claimed, but fails to

disclose that the state of the plant in a reference situation, specifically that the reference situation is defined when the wind energy plant is in operation. The choosing of the state of the plant for the reference point is considered to be an engineering expedient. One of ordinary skill would be able to make the choice of a baseline measurement, with a plant in normal operation being one of the more obvious choices to try from a finite number of standard operating conditions. Therefore, defining the reference situation to be when the wind energy plant is in operation would have been obvious to one having ordinary skill in the art at the time the invention was made, as an engineering expedient.

19. Claims 6, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rebsdorf [U.S. 6,619,918] in view of Roberts et al. [U.S. 2003/0006615].

20. Regarding claims 9 and 11, Rebsdorf discloses all elements substantially as claimed, but fails to disclose that the positioning system is GPS and that the position indicators are GPS receivers. Roberts et al. teach the use of GPS sensors as a means of location for a wind-driven generator [paragraph 47]. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the wind energy plant system and blades of Rebsdorf to use GPS sensors as position sensors, as taught by Roberts et al., in order to monitor the position of the blades because the modification amounts to a simple substitution of known, equivalent elements for tracking position which could be made by one of ordinary skill with predictable results.

21. Regarding claim 6, Rebsdorf discloses all elements substantially as claimed, but fails to disclose that the position of the at least one predefined point of the blade further comprises use of the position of the wind energy plant. Roberts et al. teach that GPS sensors can be used to locate the position of wind-driven generators [paragraph 47]. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the method of Rebsdorf to include a position measurement of the wind energy plant as a whole, as taught by Roberts et al., in order to more accurately determine the desired positions of the predetermined points of the blade.

Conclusion

22. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SEAN J. YOUNGER whose telephone number is (571)270-3763. The examiner can normally be reached on M-F 7:30-5:00 EST, Alt. Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Look can be reached on 571-272-4820. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sean J. Younger/
Examiner, Art Unit 3745

/Edward K. Look/
Supervisory Patent Examiner, Art Unit 3745